

E-FILED on 2/12/07

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MEMRY CORPORATION,

Plaintiff,

v.

KENTUCKY OIL TECHNOLOGY, N.V.,
PETER BESSELINK, MEMORY METALS
HOLLAND, B.V.,

Defendants.

No. C-04-03843 RMW

ORDER GRANTING KENTUCKY OIL'S
MOTION TO CONTINUE HEARING ON
SEVEN MOTIONS FOR PARTIAL
SUMMARY JUDGMENT

[Re Docket No. 368]

KENTUCKY OIL TECHNOLOGY, N.V.,

Counterclaimant,

v.

MEMRY CORPORATION and
SCHLUMBERGER TECHNOLOGY
CORPORATION,

Counterdefendants.

Defendant and counterclaimant Kentucky Oil Technology, N.V. ("KOT") asks this court to continue by two weeks the March 2, 2007, hearing date on the seven motions for partial summary judgment filed by plaintiff and counterdefendant Memry Corporation ("Memry") and counterdefendant

Schlumberger Technology Corporation ("STC"). Memry filed two motions for partial summary judgment on January 25 and 26, 2007; STC filed five motions on January 26, 2007. These seven motions are accompanied by numerous declarations and hundreds of pages of supporting materials.

Memry and STC noticed these motions for the last possible day to hear dispositive motions, giving only the minimal amount of time for KOT to respond and for the court to consider the motions.¹

STC's contends that the scheduling of these motions is appropriate because KOT has been aware since August 2005 that STC and Memry intended to seek summary judgment "directed to each of KOT's claims for relief". STC's Opp'n to KOT's Mot. to Continue Hearing at 1. Even assuming KOT knew with absolute certainty which issues were on the table and that it should expect multiple motions, STC and Memry have nonetheless filed seven motions for summary adjudication (each directed at KOT) on the last possible day and have refused to stipulate to extend KOT's time to oppose. In light of this behavior, KOT's request for additional time to respond is certainly not unreasonable. When parties file a large number of dispositive motions with voluminous supporting materials on the last possible day, it is unrealistic that the non-moving party will be able to oppose those motions or that the court will have sufficient time to properly consider the issues presented on the general timeline set forth in the Local Rules.

The court will grant the scheduling relief requested as set forth below, but does not find it necessary to require STC and Memry to submit a separate statement of undisputed for each motion or consolidate their motions into a single motion.

I. ORDER

For the reasons set forth above, the court orders:

1. KOT's opposition briefing shall be filed by Friday, February 23, 2007.
2. STC and Memry's reply briefing shall be filed by Friday, March 2, 2007.
3. The hearing on dispositive motions shall be held on Friday, March 23, 2007.
4. No further dispositive motions shall be filed.

¹ The deadline for hearing dispositive motions was extended to March 2, 2007 from February 23, 2007 by the court's December 18, 2006 Order.

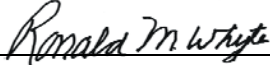
1 5. The parties shall file their Joint Pre-Trial Statement and other materials set forth
2 in section B of this court's Standing Order re: Trial Preparation by April 6, 2007.

3 6. The parties shall file their oppositions and objections as set forth in section C of
4 this court's Standing Order re: Trial Preparation by April 13, 2007.

5 7. The parties shall appear for the Pre-Trial Conference on April 19, 2007.

6 8. The parties shall appear for Trial on April 30, 2007.

7
8 DATED: 2/12/07



RONALD M. WHYTE
United States District Judge

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11 Counsel are responsible for distributing copies of this document to co-counsel that have not registered for e-filing under the court's CM/ECF program.

12 **Dated:** 2/12/07 /s/ MAG
13 **Chambers of Judge Whyte**